IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1850 OF 2006

Mrs.Generosa A. Annes ...Petitioner

vs.

MHADA and Ors. .....Respondents.

Mr.A.T.Marques for the Petitioners.

Mr.S.C.Gupta i/by. M/s.Bhaskar & Co.

for respondent no.3.

Ms.Geeta Shastri, AGP for Respondent Nos.1, 2, 5.

CORAM: J.N.PATEL, J And

S.C.DHARMADHIKARI, J.

DATED: 27TH FEBRUARY, 2007.

P.C.

1. Heard. The Petition can be disposed off at the stage of admission itself.

2. The Petitioner has approached this court claiming that they are the joint tenants of Shops

Nos.1, 2, 3, Shed and a Store Room in the building known as Supariwala Mansion (previously known as Pervis) situated at Parel, Bombay-400 012, bearing C.S.No.20/26 of Dadar Naigaon Division, Dadar, Bombay-400 012 alongwith Respondent No.4.

3. It is the case of the Petitioner that Respondent Nos.1 and 2 have failed to scrutinise the list of tenants of Supariwala Mansion and they have not taken cognisance of the fact that the Petitioner’s late Husband jointly with Respondent No.4 was the tenant of the subject matter of the property, described in the body of the petition and therefore claims protection of this court in the form of Writ of Mandamus and that the owner and Developer should not disposses them from these shops and on the other hand, the Respondent No.3 should be directed to enter into an agreement either with the petitioner singly or jointly with Respondent No.4 in respect of temporary alternate accommodation in nearby locality and permanent alternate accommodation in the reconstructed building without being dispossessed from the

premises. In the Affidavit-in-reply filed by Respondent No.1 which is sworn in by Deputy Engineer, FS/GS Division, it has been brought the notice of this court that in so far as the claim of the Petitioners is concerned they are tenants/occupants of Shop No.1 to 3. The matter is subjudice as well as for scrutiny of this office and that the building in question is in dangerous condition and unless the tenants/occupants are evicted, Respondent No.3 wold not be to carry out the development work. The Respondent no.3 owner who proposes to develop the building in question has also filed his Affidavit dated 23.1.2007 in which it has been categorically stated in para 9, that he is ready to hand over Shop No.1 (back portion) together with Shop No.2 together with shed as one unit being Shop no.2 in redeveloped building having same area to the Petitioner through Court Receiver after its reconstruction. It has been further stated, that, as regards the other premises namely Shop No.1 (front portion), Shop No.3 and store room under staircase, he is ready to hand over

possession of alternative premises in the redeveloped building in lieu of the same, to such person as may found to be entitled thereto by the Small Causes Court at Bombay before whom the dispute relating to the tenancy of the said premises is pending, as to the knowledge of the Petitioner the same are already transferred in the name of new tenants with whom they have entered into agreements of alternative accommodation in the new building in lieu of their tenancies in the suit building.

4. Therefore, in the aforesaid facts and circumstances, we find that any interference by this court in the matter would only delay the redevelopment of the building. In so far as the Petitioners claim is concerned, the same is subjudice and if the Petitioners succeed before the Small Causes Court, they would be entitled to alternate accommodation in the redeveloped building in terms of the statement made by Respondent No.3 in his affidavit which is referred to above. This Court accepts the statement made

by Respondent No.3 in his Affidavit dated 23.1.2007. This sufficiently protects the interest of the Petitioner. In our view, restraining the Respondent no.3 from carrying out redevelopment of the dilapidated building which is in dangerous condition is not in public interest, leave aside, the claim of the Petitioner which is yet to be determined. Therefore, this court is not inclined to issue any Writ of Mandamus against Respondent Nos.1 and 2.

5. We therefore dispose off this petition in the aforesaid terms with liberty to Respondent Nos.1 and 2 to conclude their inquiry in respect of the claim made by the Petitioner as per the record available with them and intimate the results to the petitioner within eight weeks. Needless to say, that the inquiry which is contemplated by Respondent nos.1 and 2, the Petitioner would be given a fair opportunity of hearing. Petition stands disposed off accordingly.

(S.C.DHARMADHIKARI, J) (J.N.PATEL, J)